IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE CIVIL JURISDICTION

APPEAL NO. 459 OF 1998
IN
COMPANY PETITION NO. 247 OF 1996

Vital Import Export, a company
incorporated under the laws of Italy
having its registered office at
Vitale Lombardia No.32, 2013 Milano,
ITALY Appellant

vs.

M/s.Hanil Era Textiles Ltd., a
public limited company incorporated
under the Companies Act, 1956
having its registered office at Village
Vanivalli, Taluka-Khalapur,
District Raigad, Maharashtra. Respondent

Mr.Uttam Hathi with Mr.Akshay Vani i/b. M/s.Singhania & Co. for the appellant.

Mr.Santosh Shetty i/b. Mr.M.P. Vashi for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 15th September 2004

ORAL JUDGMENT (Per R.M.Lodha,J.):

By the common order dated 13th February 1998 the learned Company Judge disposed of four company petitions. The present appeal arise out of company petition no.247 of 1996. By the said company petition filed under section 433 of the Companies Act, 1956, the appellant (the original petitioner) prayed for winding

up of the respondent-company.

2. The petitioner set up the case in the company petition that vide an agency agreement dated 1st October 1994 the petitioner agreed to render services as described in the agreement and the company agreed to pay a commission of 3% on the CIF values of the commodities sold by the company through the petitioner. According to the petitioner, the respondent-company sold various kinds of commodities through the petitioner. The petitioner raised various invoices from time to time and for 7 invoices (Exhibits B-1 to B-7) annexed to the company petition, a sum of US $ 7487.31 and interest thereon was due and payable. The petitioner stated that by notice dated 9th October 1995, they called upon the company to pay outstanding amount of US $ 7481.31 including interest thereon at the rate of 21% per annum within a period of 21 days from the receipt of the notice. Having not done that the petitioner filed the company petition.

3. The company resisted the company on diverse grounds and denied its liability.

4. The learned Company Judge dismissed the company petition. The learned Company Judge held that the advocate who verified the company petition as power of

attorney could not have verified the company petition. Besides that, the verification of the company petition was made on declaration only. The learned company Judge took serious note of the fact that though the company responded to the statutory notice and denied its liability, the company petition was silent about it and that the petitioner deliberately suppressed the fact regarding reply to the statutory notice. The learned Company Judge also held that the liability was seriously disputed and the allegations and the counter allegations made by the parties cannot be gone into in the summary proceedings under the Companies Act.

5. The learned counsel for the appellant submitted that the judgment of Dhanuka, J. in the case of Oil and Nagural Gas Commission v. Offshore Enterprises Inc., AIR 1993 Bombay 217 was not applicable since Ms.Talat Aseer, advocate who verified the company petition was not partner in the law firm, but only a retainer. He also submitted that it was by inadvertence that the averment regarding reply to the statutory notice was not made in the company petition. The learned counsel sought to urge that the liability was not disputed as observed by the learned Company Judge.

6. We reflected over the contentions of the learned counsel for the appellant.

7. Even if we assume for a moment that the verification of the company petition was proper and that Ms.Talat Aseer who was practising advocate could have verified the company petition, we find that there is no infirmity in the view of the learned Company Judge that the claim made in the company petition is disputed and that the allegations and the counter allegations made by the parties can only be investigated in a proper forum. As a matter of fact, immediately upon receipt of the statutory notice, the company sent reply to the petitioner and denied its liability. This vital aspect was suppressed by the petitioner from the Court by not mentioning this fact in the company petition. In the reply affidavit in opposition to the company petition also the liability has been seriously disputed. The company has set up the defence that no amount is due and payable and that the company is not liable to pay US $ 7487.31 to the petitioner.

8. The liability being in serious dispute, the dismissal of petition cannot be faulted. The appeal has no merit and is dismissed with costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)